

Summary Of Public Comments to the Planning Commission
Application No. ZM-104-06, Comprehensive Rezoning
July 26, 2006

1. Map Area 3

Property Owner: Lightfoot Medical, LLC (Roger E. Schultz, M.D.)
Property Address: 6270 Old Mooretown Road
Acreage: 0.37 acre
Current Zoning: EO – Economic Opportunity
Proposed Zoning: RR – Rural Residential

Comments/Concerns: Dr. Schultz owns this parcel and the 0.96-acre parcel behind it, which he plans to develop or sell for a future medical office. Both parcels abut the Sentara Williamsburg Regional Medical Center site, but the hospital will not grant him access to its ring road surrounding the complex. Therefore, the only possible road access is through the 0.37-acre parcel, which fronts on Old Mooretown Road; however, the Zoning Ordinance requires that access to a development must have the same or a higher intensity zoning as the use itself, and RR is less intense than EO.

John Robie, of 136 Ruth Lane, Williamsburg also spoke in opposition to the proposed rezoning of this parcel. Mr. Robie, a real estate agent, indicated that Dr. Schultz bought the commercial property with the intention of building an office on it, and the County should not change the zoning and devalue the property.

Staff Response: The property proposed for rezoning is only 100 feet wide and abuts a warehouse on the hospital property, and the combined acreage of the two parcels is only 1.33 acres. Staff does not believe that leaving this parcel with its current EO zoning to allow for a relatively small medical office or clinic would jeopardize the residential character of this area or generate significant commercial traffic on Old Mooretown Road. Therefore, staff supports retention of the existing EO zoning for this parcel.

Property Owner: Mr. and Mrs. Robert Rojas
Property Address: 6280, 6282, and 6284 Old Mooretown Road
Acreage: 6.86 acres (3.04, 2.07, and 1.75 acres respectively)
Current Zoning: EO – Economic Opportunity
Proposed Zoning: RR – Rural Residential

Comments/Concerns: Mr. and Mrs. Rojas expressed opposition to the proposed rezoning of 4.06 acres of their property on Old Mooretown Road; their home straddles the property line between two of the parcels. They indicated that they plan to develop offices on the property or sell them for commercial development to any investor wishing to be near the hospital, whose property abuts one of his parcels. That will not be possible if the property along Old Mooretown Road is rezoned from EO to RR, nor will it be possible to provide access to the rear 2.8-acre portion proposed to remain EO.

Staff Response: Because of the property's size and 385 feet of road frontage, staff believes that leaving this property with its current EO zoning could lead to commercial development of a scale and intensity that would jeopardize the residential character of this area and potentially generate significant commercial traffic on Old Mooretown Road. The concept repre-

sented by the Comprehensive Plan designation and the proposed zoning line would protect the residential character of the Old Mooretown Road frontage while allowing the rear portion of the Rojas' property to be marketed for EO purposes, assuming assemblage with and access from the property to the rear. Therefore, staff does not support retaining this property's current EO zoning along the Old Mooretown Road frontage.

Property Owner: Clarice B. Jones and Cheryl L. Jones
Property Address: 6286, 6290-A, and 6292-B Old Mooretown Road
Acreage: 1.97 acres (0.95, 0.51, and 0.51 acre respectively)
Current Zoning: EO – Economic Opportunity
Proposed Zoning: RR – Rural Residential

Comments/Concerns: Ms. (Clarice) Jones and her daughter (Cheryl) each own a parcel on Old Mooretown, and Ms. Jones also owns the parcel behind her daughter's parcel. The three parcels are not all adjacent. They expressed opposition to the proposed rezoning of their property. They want to retain the existing EO zoning for a future commercial use.

Staff Response: The zoning along this portion of Old Mooretown Road, whether RR or EO, should be continuous. Therefore, staff does not believe it would be good zoning practice for either of these parcels to be zoned EO if the adjacent property to the east (the Rojas property discussed earlier) is rezoned RR, as staff has recommended.

Property Owner: M. J. Needham
Property Address: 6300 Old Mooretown Road
Acreage: 10.23 acres
Current Zoning: EO – Economic Opportunity
Proposed Zoning: RR – Rural Residential

Comments/Concerns: Mr. Needham expressed opposition to the proposed rezoning of 1.0 acre of his property from EO to RR. He plans to develop the property commercially, and if the Old Mooretown Road frontage is rezoned RR, he won't be able to have commercial access to the road.

Staff Response: Mr. Needham also owns the adjacent mini-storage warehouse development located on a 5.53-acre parcel that fronts on East Rochambeau Drive. Staff believes that to access the subject parcel through the property on East Rochambeau Drive is more appropriate than to have commercial access to Old Mooretown Road between three existing single-family detached homes.

Property Owner: Carolyn Baker
Property Address: 6290 Old Mooretown Road
Acreage: 0.99 acre
Current Zoning: EO - Economic Opportunity
Proposed Zoning: RR – Rural Residential

Comments/Concerns: Ms. Baker indicated that she is in favor of rezoning her property to a residential designation, but wanted the property rezoned to R20 (Medium-density single-

family residential) to allow for future subdivision of her parcel. She noted that the properties along Old Mooretown Road were zoned for single-family residential use prior to their zone change to EO.

Staff Response: As noted above, the zoning along this portion of Old Mooretown Road, should be continuous. The recommended RR designation, which is consistent with the Comprehensive Plan, would recognize the existing low-density residential character, but would preclude further residential subdivision. Limiting the extent of EO frontage would protect the residential character and recognize that Old Mooretown Road has limited capacity for increases in traffic.

2. Map Area 5

Property Owner: Mark H. Holland
Property Address: 111 Fenton Mill Road
Acreage: 4.06 acres
Current Zoning: IL – Limited Industrial
Proposed Zoning: RR – Rural Residential

Comments/Concerns: Mr. Holland operates a mini-storage warehouse facility on the property and expressed opposition to the proposed rezoning because it could prohibit expansion or future development.

Staff Response: If the property is rezoned, the warehouse operation would become a non-conforming use and could be expanded by up to 50% with approval of a Special Exception from the Board of Supervisors. As stated in the Comprehensive Plan, expansion of industrial uses in this primarily residential area would not be compatible with the rural character.

3. Map Area 6

Property Owner: Mr. and Mrs. Carroll Fulks
Property Address: 423 Fenton Mill Road
Acreage: 2.0 acres
Current Zoning: RR – Rural Residential
Proposed Zoning: RC – Resource Conservation

Comments/Concerns: Mr. Fulks questioned the rationale for the rezoning of his home from RR to RC.

Staff Response: The property is surrounded on three sides by watershed property owned by the City of Williamsburg and on the fourth side by the Waller Mill bike trail. All of the surrounding zoning is RC. The existing residential use can continue under the proposed RC zoning.

4. Map Area 11

Property Owner: Philip Morris Inc.
Property Address: 1715 Merrimac Trail
Acreage: 2.0 acres
Current Zoning: IL – Limited Industrial (conditional)
Proposed Zoning: EO – Economic Opportunity

Comments/Concerns: Representatives of Philip Morris expressed opposition to the proposed rezoning

Staff Response: The property was conditionally rezoned to IL in 1994 subject to conditions voluntarily proffered by Philip Morris. The conditions are intended to prevent adverse impacts of an industrial use on the neighboring residential area. They specify that 35% of the property will be left as landscaped open space, prohibit numerous uses that would otherwise be permitted, and specify that no building expansion can occur adjacent to Country Club Acres or Tam-O-Shanter Boulevard unless the Board approves a Special Use Permit. Staff feels that these proffers are adequate to ensure that use of the property under the current zoning will be compatible with the surrounding area and therefore recommends that the zoning remain conditional IL.

5. Map Area 16

Property Owner: Bette H. Reiser
Property Address: 103 North Beach Road
Acreage: 3.72 acres
Current Zoning: WCI – Water-oriented Commercial/Industrial (conditional)
Proposed Zoning: RR – Rural Residential

Comments/Concerns: Mr. Reiser expressed opposition to the proposed rezoning, noting that in 1989 the property was conditionally rezoned WCI subject to conditions voluntarily proffered by the property owners. The purpose of the rezoning was to provide for future expansion of the adjacent Wormley Creek Marina.

Staff Response: This property was initially proposed for rezoning to RR because it is occupied by a single-family detached home. If the property owner still plans to use the property for expansion of the marina, then the current WCI zoning remains appropriate. The proffered conditions prohibit numerous uses that would otherwise be permitted, and specify that any marina expansion on the property would not have road access to the unimproved segment of Waterview Road, which cannot accommodate boat trailers. Staff feels that these proffers are adequate to ensure that use of the property under the current zoning will be compatible with the surrounding area and therefore recommends that the zoning remain conditional WCI.

6. Map Area 20

Property Owner: Mr. and Mrs. Graydon C. Moose
Property Address: 706 Hornsbyville Road
Acreage: 7.28 acres

Current Zoning: IG – General Industrial
Proposed Zoning: RR – Rural Residential

Comments/Concerns: Ms. Moose expressed opposition to the proposed rezoning of a 1.27-acre portion of her 7.28-acre parcel on Hornsbyville Road, which would make a portion of the existing industrial use nonconforming and limit future expansion.

Staff Response: The proposed RR zoning along the front portion of this parcel and the adjacent parcel to the west is intended to prevent heavy industrial access – mainly from the VEPCO parcel, which is part of the York River Commerce Park – to Hornsbyville Road, which is primarily residential and not designed for use by heavy trucks. Depending on the extent of wetlands on the site, there is room for expansion to the rear on the portion of the property proposed to remain IG.

7. Map Area 22

Property Owner: Dick Ashe
Property Address: Waterfront parcels on Back Creek
Acreage: 1.60 acres (0.42 acre, 0.38 acre, 0.29 acre, 0.22 acre, and 0.29 acre respectively)
Current Zoning: WCI – Water-oriented Commercial/Industrial
Proposed Zoning: RR – Rural Residential

Comments/Concerns: Mr. Ashe expressed opposition to the proposed rezoning, noting that with the deep channel serving the adjacent Seaford Scallop Company, the property is ideally suited for some sort of waterfront commercial/residential development.

Staff Response: The property currently has no road frontage or access, and the only possible access would be from Shirley Road, which is not wide enough to accommodate large amounts of additional traffic, especially boat trailers. Unless and until adequate access is provided, staff feels that the low intensity RR zoning is appropriate. For example, if the property were to remain WCI, a marina would be permitted as a matter of right with no improvements to Shirley Road (other than an extension of the existing road) and no alternative access provided. This property, and even some of the adjacent property, might be a candidate for a future conditional rezoning to WCI with proffers addressing the access issue.

8. Map Area 23

Property Owner: William Green
Property Address: 424 and 431 Spivey Lane
Acreage: 1.08 acres (0.44 acre and 0.64 acre, respectively)
Current Zoning: RR – Rural Residential
Proposed Zoning: RC – Resource Conservation

Comments/Concerns: Mr. Green expressed concern that there had been little citizen input during the Comprehensive Plan update process. He also questioned if he would be able to rebuild his existing dwelling if it were damaged beyond repair.

Staff Response: The properties are currently nonconforming with respect to minimum required lot size (1.5 acres required for these parcels). If rezoned, the property would still be considered a “nonconforming lot of record.” Whether zoned RR or RC, the lots are too small to be subdivided. If the house is ever destroyed by a cause beyond the control of the owner, it can be rebuilt:

- on the existing nonconforming footprint, if within 2 years; or
- at a location that meets the 50-foot setbacks; or
- at a location that meets the reduced side and rear yard dimensions spelled out in Section 24.1-804 of the Zoning Ordinance:
 - ◆ Front: 50 feet;
 - ◆ Sides: 50 feet, or 1 foot less for each 2 feet of width deficiency, but not less than 10 feet, (for example, a 240-foot wide lot would be 60 feet deficient in lot width; in that case, the side yard dimension could be reduced to 20 feet)
 - ◆ Rear: 15% of lot depth, or 15 feet, whichever is greater

Property Owner: Howard and Rachel Osborn
Property Address: 3600, 3601, and 3701 Seaford Road
Acreage: 22.92 acres (0.37 acre, 7.90 acres and 14.65 acres, respectively)
Current Zoning: RR – Rural Residential
Proposed Zoning – RC – Resource Conservation

Comments/Concerns: Mr. Osborn expressed opposition to the proposed rezoning, and indicated that in his opinion, the rezoning was a “taking” of property. He felt that adoption of the Comprehensive Plan should have been subject to a public referendum.

Staff response: Mr. Osborn’s concern is that the proposed downzoning of his property would amount to an unconstitutional “taking” of his property rights under the 5th and 14th amendments to the United States Constitution, which prevent the taking of private property for public use without just compensation. The County Attorney advises that such would not be the case. The United States Supreme Court determined in the 1992 case of *Lucas v. South Carolina Coastal Commission* that a property owner is not entitled to payment for reduction in property values as a result of government regulations (such as zoning) unless the regulation denies the landowner of *all* use of his property. A mere reduction in allowable development densities has never been determined to be a compensable “taking” under the Constitution. The proposed change from RR to RC is consistent with the policy expressed by the Comprehensive Plan of limiting residential densities in the areas subject to storm surge and having only a single access (in this case, Seaford Road).

Property Owner: Carlton C. Moore Sr.
Property Address: 507A Wildey Road
Acreage: 1.13 acres
Current zoning: RR – Rural Residential
Proposed Zoning: RC – Resource Conservation

Comments/Concerns: Mr. Moore questioned the purpose of the rezoning, and asked why Dandy and Dare were not included in the changes. He also expressed concern that he would not be able to rebuild his home if it were damaged or destroyed.

Staff Response: The proposed rezoning of York Point, Bay Tree Beach, and areas of Seaford is recommended in recognition of these areas' vulnerability to natural hazards (hurricanes, flooding, storm surge), environmental sensitivity, and limited accessibility. Dandy and Dare do not have the same degree of environmental sensitivity and vulnerability to natural hazards, and Dare has two means of ingress and egress. Single-family residences will remain permitted uses on existing lots of record. Redevelopment/rebuilding can occur in accordance with applicable setback standards. An existing home that is nonconforming as to setbacks could be rebuilt if the house is ever destroyed by a cause beyond the control of the owner as noted in the staff response to William Green (above).

Property Owner: Robert E. Schlegel
Property Address: 903 Bay Tree Beach Road
Acreage: 0.33 acre
Current Zoning: RR – Rural Residential
Proposed Zoning: RC – Resource Conservation

Comments/Concerns: Mr. Schlegel expressed opposition to the rezoning, and indicated in his opinion; the rezoning was a “taking” of land.

Staff Response: Mr. Schlegel stated that his 172 acres are all currently zoned Rural Residential; in fact, almost all of his property is currently zoned Resource Conservation, with only one lot (0.33-acre) proposed for rezoning from RR to RC. The lot is nonconforming as to both size and width under both the current and proposed zoning, and the proposed rezoning will not affect its development potential. Regarding the “taking” issue, see staff response to Mr. Howard Osborn (above). Mr. Schlegel expressed interest in aquaculture, which is a permitted use in the RC district but not in the RR district.

Property Owner: Phillip C. and Sue N. Presson
Property Address: 414 Wildey Road
Acreage: 3.28 acres
Current Zoning: RR – Rural Residential
Proposed Zoning: RC – Resource Conservation

Comments/Concerns: Mr. and Mrs. Presson expressed opposition to the proposed rezoning, noting that they want to subdivide the property under family subdivision provisions once public sewer becomes available.

Staff Response: The proposed rezoning of York Point, Bay Tree Beach, and areas of Seaford is recommended in recognition of these areas' vulnerability to natural hazards (hurricanes, flooding, storm surge), environmental sensitivity, and limited accessibility.

9. Map Area 23A

Property Owner: Dick Ashe (Tranquil Harbor Land Co.)
Property Address: 209, 223, and 231 Hansford Lane
Acreage: 11.65 acres (6.00 acres, 1.00 acre, and 4.65 acres respectively)
Current Zoning: RR – Rural Residential

Proposed Zoning: RC – Resource Conservation

Comments/Concerns: Mr. Ashe expressed opposition to the proposed rezoning from RR to RC and the consequent reduction in development density, stating that concerns about natural hazards (hurricanes, storm surge, flooding, etc.) could be adequately addressed through building code provisions to protect new structures from such hazards.

Staff Response: According to County topographic maps, all but approximately 1.06 acre of Mr. Ashe's property is four feet or less above mean sea level and thus cannot be counted as buildable area for the purpose of calculating development density. With three existing lots of record, he can build three homes – one on each lot – whether the property is zoned RR or RC. It does not appear that combining and resubdividing the three parcels – regardless of the zoning – would increase the lot yield; in fact, the lot yield would be reduced.

10. Map Area 23B

Property Owner: Robert and Marie St. Claire

Property Address: 308 Wildey Road

Acreage: 4.74 acres

Current Zoning: RR – Rural Residential

Proposed Zoning: RC – Resource Conservation

Comments/Concerns: Ms. St. Claire expressed opposition to the proposed rezoning of the property and wants to retain the opportunity of subdividing it, which would not be possible if it is rezoned to RC.

Staff Response: The proposed change from RR to RC is consistent with the policy expressed by the Comprehensive Plan of limiting residential densities in the areas subject to storm surge and having only a single access (in this case, Seaford Road).

11. Map Area 24

Property Owner: Wallace Smith

Property Address: 815 Railway Road

Acreage: 0.37 acre

Current Zoning: WCI – Water Oriented Commercial/Industrial

Proposed Zoning: RR – Rural Residential

Comments/Concerns: Mr. Smith questioned the reasoning for the change from commercial to residential zoning.

Staff Response: In accordance with the Comprehensive Plan, this change recognizes the existing residential use of this parcel. Although it is adjacent to the Dare Marina and Smith Marine Railway properties, it is occupied by a single-family residence. If it is ever to be zoned WCI, the conditional zoning approach would seem to be the most appropriate technique given the access constraints to the area.

12. Map Area 26

Property Owner: Carl A. Barrs

Property Address: 7423, 7437, 7505, 7517, 7521, and 7529 George Washington Memorial Highway

Acreage: 3.10 acres (0.14 acre, 0.49 acre, 0.97 acre, 0.56 acre, 0.51 acre, and 0.43 acre respectively)

Current Zoning: IL – Limited Industrial

Proposed Zoning: GB – General Business

Comments/Concerns: Mr. Barrs expressed opposition to the proposed rezoning of 6 parcels that he owns along Route 17, noting that he has successfully conducted an industrial operation for over 30 years in this location that does not have any adverse impacts and should not be constrained by GB zoning.

Staff Response: The property proposed for rezoning, all of which is either undeveloped or occupied by nonconforming residential structures, is not part of the existing stone yard/contracting business; therefore, the industrial use will not be affected. If rezoned to GB, these properties would have to be developed for commercial and not industrial use, consistent with the commercial character of Route 17. Follow-up conversations with Mr. Steve Barrs confirmed that the property owner understands the zoning change is proposed only for the frontage parcels. Nevertheless, they remain opposed to the change and wish to have the IL zoning maintained. It should be noted that any development of the frontage parcels, whether under IL or GB zoning, would be subject to the terms of the Route 17 Corridor overlay district, which would address architectural character and materials. Given the adjacency to an existing light industrial operation, staff believes the existing IL zoning could be maintained without significantly compromising the intent of the Comprehensive Plan.

Property Owner: Clarence Lee

Property Address: 409 Old York-Hampton Highway

Acreage: 0.34 acre

Current Zoning: IL – Limited Industrial

Proposed Zoning: GB – General Business

Comments/Concerns: Mr. Lee requested more details on the effects of the proposed rezoning of his property.

Staff Response: Parcels along this section of Old York-Hampton Highway are proposed to be reclassified to General Business to recognize existing retail and service commercial uses, as well as the development or redevelopment potential for commercial uses in this area. Mr. Lee's parcel is occupied by a single-family detached house, which is a nonconforming use under both the existing and the proposed zoning. In a subsequent discussion with staff, Mr. Lee indicated that he hopes to build an addition onto his house, which would be permitted under both IL and GB, since the Zoning Ordinance provides for the expansion of nonconforming homes in commercial and industrial districts provided that all applicable setback requirements are met.

13. Map Area 35

Property Owner: Rosedown Plantation LP (Speaker: Frank Alvarado)

Property Address: 710 Tide Mill Road

Acreage: 2.99 acres

Current Zoning: RR – Rural Residential

Proposed Zoning: No change

Comments/Concerns: Mr. Alvarado lives next to Rodgers Smith Boat Landing and expressed concern about its proposed change in zoning from Rural Residential to Resource Conservation. He felt the change might affect his ability to build on his lot.

Staff Response: The Rosedown Plantation LP lot sits on the eastern side of the boat landing where an evergreen buffer separates the properties. The change in zoning classification is consistent with the County's efforts to place public properties within the Resource Conservation district. The change will have no effect on surrounding properties, which are proposed to remain Rural Residential.

14. Map Area 38

Property Owner: Elfreda W. Wynder ETALS and Alfrelia W. Wilmore ET ALS

Property Address: 3103 and 3107 Big Bethel Road

Acreage: 0.98 acre and 0.80 acre respectively

Current Zoning: GB – General Business

Proposed Zoning: LB – Limited Business

Comments/Concerns: Ms. Wynder and Aurzelia W. Banks expressed concerns in letters to the Planning Commission, stating that the proposed rezoning would limit the range of permitted commercial activities and thus reduce the economic value. In addition, Ms. Banks stated that housing in the area is more than 500 feet away from her commercial property and therefore would not be adversely affected by more intensive commercial development.

Staff Response: The proposed change from General Business to Limited Business is in accordance with the Comprehensive Plan recommendation for a less intensive commercial node that is compatible with the surrounding residential areas. The largest affected area has approximately 8.5 acres and is already developed with mini-storage warehouses, a gas station/convenience store, and car wash. The remaining acreage consists mainly of undeveloped parcels and a few homes. The southwest quadrant of the intersection, where Ms. Wynder's and Ms. Banks two parcels are located, is approximately five acres in size, controlled by four separate property owners, with the largest property owner (1.97 acres) being Ms. Nannie Hudson (see below). Additionally, these properties all back up to residentially zoned land (R13), of which approximately six acres are undeveloped.

The purpose of the change is to prevent negative impacts of intensive commercial development – such as traffic, noise, and lighting – on nearby homes. Because of the proximity of residential development, the preferred commercial development in this area includes commercial activities of low to moderate intensity such as “9 to 5” businesses (i.e. businesses that are not open 24 hours a day) and offices that do not adversely affect residential development

and do not generate significant amounts of traffic at peak periods. The proposed LB zoning would provide for these types of activities.

Property Owner: Nannie Hudson
Property Address: 3017 Big Bethel Road
Acreage: 1.97 acres
Current Zoning: GB – General Business
Proposed Zoning: LB – Limited Business

Comments/Concerns: Ms. Hudson expressed her concerns in a letter sent to the Planning Division. She stated that she had been paying taxes on the General Business property for many years and wanted her property to be developed at its full potential. She expressed concern about the range of permitted uses in the LB district and stated that there were no businesses that would locate on her property if they could only be open from 9 to 5.

Staff Response: Ms. Hudson's is the largest parcel in the southwest quadrant of the intersection and as such has the most development potential. However, staff feels that although GB zoning provides for a wider range of commercial activities, there are many uses permitted in the GB district that are also permitted in the LB district either as a matter of right or with a Special Use Permit. Also, see above comments.